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) Case No.: 2:19-cv-00624-RJC  
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**SPECIAL DISCOVERY MASTER’S REPORT AND RECOMMENDATION AND  
[PROPOSED] ORDER RE: PLAINTIFF BESSEMER SYSTEM FEDERAL CREDIT  
UNION’S MOTION FOR PROTECTIVE ORDER RE: SUBPOENA DIRECTED TO  
NON-PARTY, COMPUSOURCE SYSTEMS, INC.**

By letter dated May 25, 2023, counsel for Plaintiff Bessemer System Federal Credit Union (“Bessemer”) moved for a Protective Order to quash in part the deposition subpoena that Defendant Fiserv Solutions, LLC (“Fiserv”) issued to non-party, CompuSource Systems, Inc. (“CompuSource”). The Motion for Protective Order focused on Topic 21 in the subpoena. A true and correct copy of the subpoena is attached hereto as Exhibit “A”. That topic references an Exhibit 1 attached to the subpoena consisting of a November 22, 2019 e-mail exchange between counsel for Bessemer and an employee at CompuSource. By letter dated May 26, 2023, Fiserv responded to the Motion for Protective Order raising both standing issues and substantive arguments in opposition to Bessemer’s requested relief. Principally, Fiserv argues that Bessemer’s counsel did not have standing to challenge a subpoena to which CompuSource had

made no objections. Additionally, Fiserv argued that Topic 21 was relevant to potential bias on the part of Bessemer's counsel and the overall weight and credibility of CompuSource's testimony. I invited Bessemer to file a reply to Fiserv's opposition which Bessemer did by letter dated June 1, 2023.

Having considered the submissions of the Parties and the case law cited in those submissions, I make the following recommendation.

## **II. ANALYSIS AND RECOMMENDED DECISION**

Although Fiserv notes that CompuSource has not objected to the subpoena, that fact does not eliminate Bessemer's standing to challenge a subpoena to a non-party. Specifically, a party may challenge such a subpoena when it "claims some personal right or privilege with regard to the documents sought." *See Thomas v. Marina Assocs.*, 202 F.R.D. 433, 434 (E.D. Pa. 2001). Based on my review of Exhibit 1 attached to the subpoena, I understand Bessemer's counsel, Mr. Nerko's concern about a potentially unrestricted and far-flung examination regarding any relationship or communication at any time that he may have had with CompuSource, the company that replaced Fiserv after the termination of the Master Services Agreement between Fiserv and Bessemer. Nevertheless, I find that a limited examination of the CompuSource designated witness regarding this e-mail exhibit as it may pertain to the termination of Fiserv and CompuSource's retention to replace Fiserv is appropriate. Therefore, I recommend that Bessemer's Motion for Protective Order precluding any examination regarding Topic 21 in the subpoena and the attached Exhibit 1 e-mail be DENIED.

However, I further recommend that any examination by Fiserv on that topic be limited in scope as follows:

1. Fiserv can inquire regarding any communications or actions between CompuSource and Mr. Nerko related to Bessemer's decision to terminate the Master Services Agreement with Fiserv;
2. Fiserv can inquire about any communications, cooperation or assistance between Mr. Nerko, his law firm and CompuSource regarding CompuSource's selection as the successor to Fiserv in providing services to Bessemer; and
3. Fiserv can inquire about any conversation or communications between Mr. Nerko and CompuSource regarding this Lawsuit.

Any communications or dealings between Mr. Nerko and CompuSource relating to other credit unions or the industry in general is not relevant to the remaining claims and defenses in this case and should not be the subject of examination by Fiserv.

### **III. CONCLUSION**

Consistent with the above Report and Recommendation, I grant limited relief to Bessemer regarding Topic 21 in the subpoena that Fiserv served upon Non-Party, CompuSource such that Fiserv's examination of the CompuSource designated witness on that topic is limited as set forth above.

Date: June 5, 2023

Respectfully submitted by:

/s/ Mark D. Shepard

Mark D. Shepard (PA Id. No. 36902)  
Special Discovery Master

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Mark D. Shepard



**CERTIFICATE OF SERVICE**

I hereby certify that on 5th day of June, 2023, I electronically filed the foregoing **Special Discovery Master's Report and Recommendation and [Proposed] Order Re: Plaintiff Bessemer System Federal Credit Union's Motion For Protective Order Re: Subpoena Directed to Non-Party, CompuSource Systems, Inc.** using the CM/ECF system which will send notification of such filing to the below counsel of record:

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/s/ Mark D. Shepard

Mark D. Shepard  
Special Discovery Master